

**IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE ORDER**

<p>IN THE MATTER OF:</p> <p><b>JASON DELANEY; JR RECYCLING, LLC</b></p>	<p style="text-align: center;">ADMINISTRATIVE ORDER</p> <p style="text-align: center;">NO. 2022-SW- 07</p>
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To: Jason R. Delaney  
120 Thomas Street  
Cascade, Iowa 52033

Jason Delaney, Registered Agent  
JR Recycling, LLC  
734 Walnut Road  
Peosta, Iowa 52068

RE: Removal and disposal of waste tires.

**I. SUMMARY**

This administrative order (Order) is issued by the Iowa Department of Natural Resources (DNR) to Mr. Jason Delaney to address the illegal disposal of waste tires. Mr. Delaney is required 1) to remove and properly dispose of all remaining waste tires pursuant to the provisions below; 2) to comply with Iowa laws governing tire disposal and recycling at all times in the future; 3) to maintain accurate records pursuant to this Order; and 4) to pay an administrative penalty of \$10,000.00 due to the historic nature of these violations.

Any questions regarding this Order should be directed to:

**Relating to technical requirements:**

Tom McCarthy, Env. Specialist Sr.  
Iowa Department of Natural Resources  
Field Office No. 1  
1101 Commercial Court, Suite 10  
Manchester, Iowa 52057  
Ph: (563) 927-2640

**Relating to legal requirements and  
administrative penalty:**

David Scott, Attorney  
Iowa Department of Natural Resources  
Legal Services Division  
1023 W. Madison St.  
Washington, Iowa 52353  
Ph: (319) 653-2135

**II. JURISDICTION**

This Order is issued pursuant to Iowa Code § 455B.307(2), which authorizes the Director of the DNR to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division IV, Part

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1 (solid waste) and the rules and regulations adopted pursuant to that part; Iowa Code §§ 455D.4A and 455D.23, which address criteria for legitimate recycling in Iowa and authorize the Director to issue any order necessary to secure compliance with those criteria, including removal and proper disposal; and, Iowa Code § 455B.109 and 567 Iowa Administrative Code (IAC) 10, which authorize the Director to assess administrative penalties.

**III. STATEMENT OF FACTS**

The following relevant facts are stated in chronological order:

1. JR Recycling, LLC was issued a waste tire processing permit (Permit No. 31-WTM-01-15P-PRT) on December 10, 2015 that authorized the company to operate a waste tire processing facility (PRT) in accordance with the requirements of 567 Iowa Administrative Code (IAC) 117. The permit was valid for a term of three years.

2. In 2018, the DNR denied a permit renewal application because the facility was deemed by the City of Cascade, Iowa, to be in violation of the City's zoning regulations. As such, the permit expired in December, 2018.

3. Following legal action by the City, on May 15, 2019, the City ordered that all waste tires be removed within 60 days.

4. On March 5, 2020, staff from DNR Field Office (FO) 1 received a complaint that Mr. Delaney had moved tires from his business location in Cascade to a farm located at 28359 31<sup>st</sup> Street, Bernard, Iowa (Beringer Farm).

5. On March 10, 2020, DNR FO1 staff visited the Beringer Farm site and estimated 27,945 passenger tire equivalents (PTE, hereafter, Tires) on the property. During a meeting with Mr. Delaney on that day, he confirmed he had moved the tires to the Beringer Farm site. DNR staff also noted that an additional approximately 4,600 tires were located at the business location in Cascade.

6. On April 15, 2020, the owner of the Beringer Farm location notified DNR that he had agreed to allow storage of the tires on his property for a temporary period, but that he was unaware that such storage was illegal.

7. On April 27, 2020, DNR issued a Notice of Violation (NOV) to Mr. Delaney noting that, among other violations, the tire storage at both sites violated Iowa law. Mr. Delaney was ordered to provide records regarding tire processing and disposal, and instructed that only a licensed hauler and processor could remove and process tires.

8. On September 16, 2020, the DNR approved a variance request by Mr. Delaney to allow for tire processing. The variance was issued in good faith

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that Mr. Delaney would process the remaining tires at both properties. The variance included specific restrictions, including monthly processing reporting, no additional tires being collected, and a deadline for processing of December 31, 2020, at which time the variance would expire. Finally, the variance noted that as of January 1, 2021, storage of tires in excess of 500 must be approved by the DNR in writing.

9. On January 22, 2021, DNR issued a second NOV to Mr. Delaney for violations of Iowa's tire storage and processing regulations. The NOV summarized events occurring after the issuance of a variance allowing for tire processing, and the results of a January 13, 2021 site inspection. Little, if any, processing of tires had occurred. The NOV required compliance with Iowa law, as well as reporting as to the number of waste and reusable tires, respectively, at the Cascade, Iowa, location.

10. At the request of Mr. Delaney, the variance was extended until March 29, 2021, to allow Mr. Delaney to process and dispose of the remaining tires.

11. On April 2, 2021, DNR staff met with Mr. Delaney to inspect the Cascade and Beringer Farm properties. Staff noted that, while there had been improvement at the properties, there still remained a significant number of waste tires at both locations.

12. On May 4, 2021, the DNR issued a third NOV to Mr. Delaney for continued violations of Iowa's tire storage and processing regulations. The NOV required Mr. Delaney to complete the clean-up of the waste tire sites within 30 days and to provide records for all processing and disposal of tires initially referenced in the April, 2020, NOV.

13. On June 22, 2021, the DNR issued a fourth NOV to Mr. Delaney for failing to complete tire removal. The NOV recognized partial compliance, but noted that thousands of tires remain on the properties after over a year of efforts by the DNR to encourage and allow processing and removal. The NOV noted that the matter would be submitted to DNR legal services for further enforcement consideration.

14. On December 6, 2021, DNR staff met with Mr. Delaney and his counsel to discuss the matters addressed in this Order. Mr. Delaney provided invoices and receipts related to tire disposal.

15. At that meeting, Mr. Delaney stated he is not storing and has not disposed of any tires, other than those being stored at his business location in Cascade, Iowa.

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16. At that meeting, Mr. Delaney provided a series of receipts which purported to represent proper disposal of tires.

17. Following two months of efforts to reach a settlement, it was determined that Mr. Delaney would not enter a settlement agreement. As such, this Order is being issued subject to appeal.

**IV. CONCLUSION OF LAW**

1. Iowa Code § 455B.307 prohibits a private entity from dumping or depositing or allowing the dumping or depositing of any solid waste at any place other than a sanitary disposal project approved by the Director unless the entity has been granted a permit by the DNR which allows the dumping or depositing of solid waste on land owned or leased by the entity. Despite the current status of tire disposal, the above-stated facts establish a violation of this statutory prohibition over a number of years.

2. Iowa Code Chapter 455D regulates recycling of materials that would otherwise be solid waste. Section 455D.4A addresses the requirements a facility must meet to establish that the facility is legitimately recycling material.

3. Iowa Code § 455D.4A(3) authorizes the DNR to deem material that is not legitimately recycled to be solid waste.

4. Iowa Code § 455D.23 authorizes the DNR to require material that is not legitimately recycled to be properly disposed of.

5. Iowa Code § 455B.304 provides that the Environmental Protection Commission (Commission) shall establish rules governing the handling and disposal of solid waste. The Commission has adopted such rules at 567 Iowa Administrative Code (IAC) chapters 100-123.

6. The Commission has adopted 567 IAC 100.4 for the regulation of open dumping in Iowa. The provision prohibits a private entity from dumping or depositing, or permitting the dumping or depositing, of any solid waste at any place other than a sanitary disposal project approved by the Director and pursuant to the terms of a permit granted by the DNR authorizing the disposal of solid waste. Despite the current status of tire disposal, the above-stated facts establish multiple violations of this prohibition on open dumping over multiple years.

7. The Commission has adopted 567 IAC 117.4(1) to prevent accumulation of waste tires on a property. The provision states that no business or individual shall store more than 500 passenger tire equivalents without obtaining a permit for a waste tire stockpile pursuant to 117.4(2). The above-stated facts establish a violation of this regulation over multiple years.

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**V. ORDER**

**THEREFORE**, the DNR orders the following:

1. No more than 500 tire equivalents (PTEs) will be stored at Mr. Delaney's businesses, respectively.
2. Subject to paragraph 1, above, within 60 days of the date this Order is signed by the Director, Mr. Delaney must remove and properly dispose of all tires located in the state of Iowa. Upon completion of removal, Mr. Delaney will contact DNR staff to conduct a final site inspection of all locations.
3. Mr. Delaney will comply with all Iowa tire storage and disposal requirements in the future. This includes, but is not limited to,
  - a. There will be no waste tire processing of any type by Mr. Delaney at any location.
  - b. Mr. Delaney will maintain accurate records of all waste tires generated on his properties and all waste tires removed from his business properties for a period of 24 months. These records will be maintained on the respective property for review by DNR staff upon request. Failure to have such records available on request will constitute a violation of this Order.
  - c. Mr. Delaney shall maintain a contract with an Iowa certified waste tire hauling company for removal of tires from his property. The contract shall be available upon request from DNR staff. Failure to maintain such a contract and to have such contract available on request will constitute a violation of this Order
4. Mr. Delaney has stated affirmatively that he unaware of any location in the state of Iowa where tires have been stored or disposed of, other than at his businesses or the Beringer Farm property. Discovery of any other illegal-disposal sites will be considered a violation of this Order.
5. At all times in the future, Mr. Delaney must comply with the legitimate recycling criteria established in Iowa Code § 455D.4A, including the speculative accumulation recordkeeping requirement enumerated in Iowa Code § 455D.4A(7). As such, Mr. Delaney must maintain accurate records of all tires stored on, and removed from, his personal and business properties. Failure to maintain such accurate records will constitute a violation of this Order.
6. Mr. Delaney shall pay an Administrative Penalty of \$10,000.00 within 60 days of this Order being signed by the Director.

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**VI. CIVIL PENALTY**

1. Iowa Code § 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00 that may be assessed administratively. The Commission has adopted this schedule with procedures authorizing the Director to assess administrative penalties at 567 IAC 10.

2. Iowa Code § 455B.307(3) provides for civil penalties of up to \$5,000.00 per day for solid waste violations. Given the daily penalties that will apply should this matter go to civil court, applicable rules require that the department consider not only the maximum daily penalty in the Code for the type of violation, but also the maximum penalty for cumulative violations under consideration. See 567 IAC 10.2(4).

3. 567 IAC 10 establishes the criteria that the DNR must consider in determining whether an administrative penalty is warranted, and if so how much the penalty should be. The general categories for consideration are the economic benefit of the alleged non-compliance by the violator, the gravity of the alleged violation, and the culpability of the violator. The administrative penalty assessed by this Order is determined as follows:

a) Economic Benefit: 567 IAC chapter 10 requires that the DNR consider the costs saved or likely to be saved by noncompliance. 567 IAC 10.2(1) states that “where the violator received an economic benefit through the violation or by not taking timely compliance or corrective measures, the department shall take enforcement action which includes penalties which at least offset the economic benefit.” This includes delayed costs. 567 IAC 10.2(1) further states, “reasonable estimates of economic benefit should be made where clear data are not available.”

Based on a conservative estimate by DNR professional staff that approximately 27,000 tires were stored at properties controlled by Mr. Delaney for multiple years and an approximate disposal cost of \$2.00 per tire, Mr. Delaney avoided approximately \$64,000.00 in disposal costs plus transportation costs for multiple years.

As such, DNR is assessing \$4,000.00 to recover avoided and delayed costs as required by rule.

b) Gravity of the Violations: Elements to consider when determining the gravity of a violation include the actual or threatened harm to the environment or public health and safety, and whether the violation threatens the integrity of the regulatory program.

The DNR’s waste tire program depends on processors to be properly permitted, and to follow permit requirements, and to comply with restrictions

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on waste tire storage for parties that are not permitted. Moving tires to different locations in an apparent effort to avoid compliance with Iowa law directly threatens the DNR waste tire program and threatens public health and safety.

As such, \$3,000.00 is assessed for this factor.

c) Culpability: The factors to be considered in determining the culpability of the violator include the degree of intent or negligence, and whether the violator has taken remedial measures to address the harm caused by the violations.

Mr. Delaney has been notified of DNR waste tire rules and regulations on multiple occasions and he is aware of waste tire restrictions in Cascade, Iowa. These interactions go back to at least 2015, and have resulted in ongoing non-compliance addressed in four NOV's over the past two years.

As such, \$3,000.00 is assessed for this factor.

d) Aggravating Factor: This matter has dragged out for multiple years despite DNR efforts to reach a viable settlement. As such, the DNR is authorized to increase the administrative penalty by \$1,000.00.

4. As such, the DNR is assessing a penalty of \$10,000.00 for the violations enumerated in this Order.

## VII. APPEAL RIGHTS

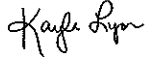
This Order is subject to appeal pursuant to Iowa Code § 455B.110 and the contested case rules promulgated pursuant to that section. An appeal must be received by the DNR within 60 days of the date this Order issued, at which time a contested case hearing will be scheduled before an Administrative Law Judge. Failure to appeal will result in this Order being considered final agency action.

## VIII. NONCOMPLIANCE WITH THIS ORDER

Failure to comply with any requirement of this Order may result in the

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imposition of further administrative penalties or referral to the Iowa Attorney General to obtain injunctive relief and/or civil penalties.



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Kayla Lyon, Director  
Iowa Department of Natural Resources

CC: DNR Field Office 1; David Scott; City of Cascade, Iowa; Owner of Berringer Farm site.